

State of South Dakota

EIGHTY-FOURTH SESSION LEGISLATIVE ASSEMBLY, 2009

400Q0094

HOUSE JUDICIARY ENGROSSED NO. **HB 1022** - 1/28/2009

Introduced by: The Committee on Judiciary at the request of the Department of Revenue and Regulation

1 FOR AN ACT ENTITLED, An Act to make certain members of limited liability companies and
2 partners of partnerships personally responsible for certain tax debts.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-45-48.1 be amended to read as follows:

5 10-45-48.1. Any person who:

6 (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed
7 by this chapter is guilty of a Class 6 felony;

8 (2) Fails to pay tax due under this chapter within sixty days from the date the tax
9 becomes due is guilty of a Class 1 misdemeanor;

10 (3) Fails to keep the records and books required by § 10-45-45 or refuses to exhibit these
11 records to the secretary of revenue and regulation or ~~his~~ the secretary's agents for the
12 purpose of examination is guilty of a Class 1 misdemeanor;

13 (4) Fails to file a return required by this chapter within sixty days from the date the return
14 is due is guilty of a Class 1 misdemeanor;



- 1 (5) Engages in business as a retailer under this chapter without obtaining a sales tax
2 license is guilty of a Class 1 misdemeanor;
- 3 (6) Engages in business as a retailer under this chapter after ~~his~~ the person's sales tax
4 license has been revoked by the secretary of revenue and regulation is guilty of a
5 Class 6 felony;
- 6 (7) Willfully violates any rule of the secretary of revenue and regulation for the
7 administration and enforcement of the provisions of this chapter is guilty of a Class
8 1 misdemeanor;
- 9 (8) Violates either subdivision (2) or subdivision (4) two or more times in any
10 twelve-month period is guilty of a Class 6 felony; or
- 11 (9) Engages in business as a retailer under this chapter without obtaining a sales tax
12 license after having been notified in writing by the secretary of revenue and
13 regulation that the person is a retailer subject to the provisions of the sales and use
14 tax laws is guilty of a Class 6 felony. It is not a violation of this subdivision if the
15 person engaging in business as a retailer files an application for a sales tax license
16 and meets all lawful prerequisites for obtaining such license within three days from
17 receipt of written notice from the secretary.

18 For purposes of this section, the term, person, includes corporate officers ~~having, member-~~
19 managers or managers of limited liability companies, or partners that control, supervision of
20 supervise, or are charged with the responsibility for making of filing tax returns or remitting tax
21 payments pursuant to § 10-45-55.

22 Section 2. That § 10-45-55 be amended to read as follows:

23 10-45-55. If a corporation, limited liability company, limited partnership, limited liability
24 partnership, or limited liability limited partnership subject to tax under this chapter fails for any

1 reason to file the required returns or to pay the tax due, any of ~~its~~ the corporate officers ~~having,~~
2 member-managers or managers of limited liability companies, or partners of partnerships that
3 control, or supervision of supervise, or are charged with the responsibility for ~~making such of~~
4 filing the returns ~~and~~ or remitting tax payments shall be personally liable for ~~such~~ the failure.
5 The dissolution of a corporation ~~shall,~~ limited liability company, limited partnership, limited
6 liability partnership, or limited liability limited partnership does not discharge an ~~officer's~~
7 officer, member-manager, manager, or partner's liability for a prior failure of the corporation,
8 limited liability company, limited partnership, limited liability partnership, or limited liability
9 limited partnership to ~~make~~ file a return or remit the tax due. The sum due for such a liability
10 may be assessed and collected as provided by law.

11 If the corporate officers, limited liability company member-managers or managers, or
12 partners elect not to be personally liable for the failure to file the required returns or to pay the
13 tax due, the corporation, limited liability company, limited partnership, limited liability
14 partnership, or limited liability limited partnership shall provide the Department of Revenue and
15 Regulation with a surety bond or certificate of deposit as security for payment of any tax that
16 may become due. The bond or certificate of deposit provided for in this section shall be in an
17 amount equal to the estimated annual gross receipts multiplied by the applicable sales or excise
18 tax rate. This section does not apply to elected or appointed officials of a municipality if ~~they~~
19 ~~are~~ bonded pursuant to §§ 9-14-6 and 9-14-6.1.

20 Section 3. That § 10-46-47.1 be amended to read as follows:

21 10-46-47.1. If a corporation, limited liability company, limited partnership, limited liability
22 partnership, or limited liability limited partnership subject to tax under this chapter fails for any
23 reason to file the required returns or to pay the tax due, any of ~~its~~ the corporate officers ~~having,~~
24 member-managers or managers of limited liability companies, or partners of partnerships that

1 control, ~~or supervision of supervise~~, or are charged with the responsibility for ~~making such of~~
2 filing the returns and or remitting tax payments shall be personally liable for ~~such the~~ failure.

3 The dissolution of a corporation ~~shall~~, limited liability company, limited partnership, limited
4 liability partnership, or limited liability limited partnership does not discharge an ~~officer's~~
5 officer, member-manager, manager, or partner's liability for a prior failure of the corporation,
6 limited liability company, limited partnership, limited liability partnership, or limited liability
7 limited partnership to make file a return or remit the tax due. The sum due for such a liability
8 may be assessed and collected as provided by law.

9 If the corporate officers, limited liability company member-managers or managers, or
10 partners elect not to be personally liable for the failure to file the required returns or to pay the
11 tax due, the corporation, limited liability company, limited partnership, limited liability
12 partnership, or limited liability limited partnership shall provide the Department of Revenue and
13 Regulation with a surety bond or certificate of deposit as security for payment of any tax that
14 may become due. The bond or certificate of deposit provided for in this section shall be in an
15 amount equal to the estimated annual gross receipts multiplied by the applicable sales or excise
16 tax rate. This section does not apply to elected or appointed officials if ~~they are~~ bonded pursuant
17 to §§ 9-14-6 and 9-14-6.1.

18 Section 4. That § 10-46A-13 be amended to read as follows:

19 10-46A-13. If a corporation, limited liability company, limited partnership, limited liability
20 partnership, or limited liability limited partnership subject to tax under this chapter fails for any
21 reason to file the required returns or to pay the tax due, any of ~~its the corporate~~ officers ~~having,~~
22 member-managers or managers of limited liability companies, or partners of partnerships that
23 control, ~~or supervision of supervise~~, or are charged with the responsibility for ~~making such of~~
24 filing the returns and or remitting tax payments shall be personally liable for ~~such the~~ failure.

1 The dissolution of a corporation ~~shall~~, limited liability company, limited partnership, limited
2 liability partnership, or limited liability limited partnership does not discharge an ~~officer's~~
3 officer, member-manager, manager, or partner's liability for a prior failure of the corporation,
4 limited liability company, limited partnership, limited liability partnership, or limited liability
5 limited partnership to make file a return or remit the tax due. The sum due for such a liability
6 may be assessed and collected as provided by law.

7 If the corporate officers, limited liability company member-managers or managers, or
8 partners elect not to be personally liable for the failure to file the required returns or to pay the
9 tax due, the corporation, limited liability company, limited partnership, limited liability
10 partnership, or limited liability limited partnership shall provide the Department of Revenue and
11 Regulation with a surety bond or certificate of deposit as security for payment of any tax that
12 may become due. The bond or certificate of deposit provided for in this section shall be in an
13 amount equal to the estimated annual gross receipts multiplied by the applicable sales or excise
14 tax rate. This section does not apply to elected or appointed officials of a municipality if ~~they~~
15 ~~are~~ bonded pursuant to §§ 9-14-6 and 9-14-6.1.

16 Section 5. That § 10-46A-13.1 be amended to read as follows:

17 10-46A-13.1. Any person who:

- 18 (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed
19 by this chapter is guilty of a Class 6 felony;
- 20 (2) Fails to pay tax due under this chapter within sixty days from the date the tax
21 becomes due is guilty of a Class 1 misdemeanor;
- 22 (3) Fails to keep the records and books required by § 10-45-45 or refuses to exhibit these
23 records to the secretary of revenue and regulation or ~~his~~ the secretary's agents for the
24 purpose of examination is guilty of a Class 1 misdemeanor;

- 1 (4) Fails to file a return required by this chapter within sixty days from the date the return
2 is due is guilty of a Class 1 misdemeanor;
- 3 (5) Engages in business under this chapter without obtaining a contractor's excise tax
4 license is guilty of a Class 1 misdemeanor;
- 5 (6) Engages in business under this chapter after ~~his~~ the person's contractor's excise tax
6 license has been revoked by the secretary of revenue and regulation is guilty of a
7 Class 6 felony;
- 8 (7) Violates either subdivision (2) or subdivision (4) of this section two or more times
9 in any twelve-month period is guilty of a Class 6 felony; or
- 10 (8) Engages in business under this chapter without obtaining a contractor's excise tax
11 license after having been notified in writing by the secretary of revenue and
12 regulation that the person is a contractor subject to the provisions of the contractors'
13 excise tax laws is guilty of a Class 6 felony. It is not a violation of this subdivision
14 if the person engaging in business files an application for a contractor's excise tax
15 license and meets all lawful prerequisites for obtaining such license within three days
16 from receipt of written notice from the secretary.

17 For purposes of this section, the term, person, includes corporate officers ~~having, member-~~
18 managers or managers of limited liability companies, or partners that control, supervision of
19 supervise, or are charged with the responsibility for making of filing tax returns or remitting tax
20 payments pursuant to § 10-46A-13.

21 Section 6. That § 10-46B-11 be amended to read as follows:

22 10-46B-11. If a corporation, limited liability company, limited partnership, limited liability
23 partnership, or limited liability limited partnership subject to tax under this chapter fails for any
24 reason to file the required returns or to pay the tax due, any of ~~its~~ the corporate officers having,

1 member-managers or managers of limited liability companies, or partners of partnerships that
2 control, or supervision of supervise, or are charged with the responsibility for making such of
3 filing the returns and or remitting tax payments shall be personally liable for such the failure.
4 The dissolution of a corporation ~~shall~~, limited liability company, limited partnership, limited
5 liability partnership, or limited liability limited partnership does not discharge an ~~officer's~~
6 officer, member-manager, manager, or partner's liability for a prior failure of the corporation,
7 limited liability company, limited partnership, limited liability partnership, or limited liability
8 limited partnership to ~~make~~ file a return or remit the tax due. The sum due for such a liability
9 may be assessed and collected as provided by law.

10 If the corporate officers, limited liability company member-managers or managers, or
11 partners elect not to be personally liable for the failure to file the required returns or to pay the
12 tax due, the corporation, limited liability company, limited partnership, limited liability
13 partnership, or limited liability limited partnership shall provide the Department of Revenue and
14 Regulation with a surety bond or certificate of deposit as security for payment of any tax that
15 may become due. The bond or certificate of deposit provided for in this section shall be in an
16 amount equal to the estimated annual gross receipts multiplied by the applicable sales or excise
17 tax rate. This section does not apply to elected or appointed officials of a municipality if ~~they~~
18 ~~are~~ bonded pursuant to §§ 9-14-6 and 9-14-6.1.

19 Section 7. That § 10-46B-11.1 be amended to read as follows:

20 10-46B-11.1. Any person who:

- 21 (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed
22 by this chapter is guilty of a Class 6 felony;
- 23 (2) Fails to pay tax due under this chapter within sixty days from the date the tax
24 becomes due is guilty of a Class 1 misdemeanor;

- (3) Fails to keep the records and books required by § 10-45-45 or refuses to exhibit these records to the secretary of revenue and regulation or ~~his~~ the secretary's agents for the purpose of examination is guilty of a Class 1 misdemeanor;
- (4) Fails to file a return required by this chapter within sixty days from the date the return is due is guilty of a Class 1 misdemeanor;
- (5) Engages in business under this chapter without obtaining a contractor's excise tax license is guilty of a Class 1 misdemeanor;
- (6) Engages in business under this chapter after ~~his~~ the person's contractor's excise tax license has been revoked by the secretary of revenue and regulation is guilty of a Class 6 felony;
- (7) Violates either subdivision (2) or subdivision (4) two or more times in any twelve-month period is guilty of a Class 6 felony; or
- (8) Engages in business under this chapter without obtaining a contractor's excise tax license after having been notified in writing by the secretary of revenue and regulation that the person is a contractor subject to the provisions of the contractors' excise tax laws is guilty of a Class 6 felony. It is not a violation of this subdivision if the person engaging in business files an application for a contractor's excise tax license and meets all lawful prerequisites for obtaining such license within three days from receipt of written notice from the secretary.

For purposes of this section, the term, person, includes corporate officers ~~having, member-~~ managers or managers of limited liability companies, or partners that control, ~~supervision of~~ supervise, or are charged with the responsibility ~~for making of filing~~ tax returns or remitting tax payments pursuant to § 10-46B-11.

Section 8. That § 10-47B-41 be amended to read as follows:

1 10-47B-41. A corporation, limited liability company, limited partnership, limited liability
2 partnership, or limited liability limited partnership subject to the taxes imposed by this chapter
3 and its corporate officers, member-managers or managers of limited liability companies, or
4 partners of partnerships are jointly and severally liable for the filing of reports or returns and the
5 payment of tax, penalty, and interest due. The dissolution of a corporation, limited liability
6 company, limited partnership, limited liability partnership, or limited liability limited
7 partnership does not discharge an ~~officer's~~ officer, member-manager, manager, or partner's
8 liability for a prior failure of the corporation, limited liability company, limited partnership,
9 limited liability partnership, or limited liability limited partnership to ~~make~~ file a return or remit
10 the tax due. An officer, member-manager, manager, or partner subject to personal liability is not
11 discharged from that liability upon vacating the office. An officer, member, or partner may be
12 discharged from future liability upon notifying the secretary in writing. The sum due for such
13 a liability may be assessed and collected as provided by law.

14 Section 9. That § 10-33A-17 be amended to read as follows:

15 10-33A-17. Any person who:

- 16 (1) Makes any false or fraudulent return in attempting to defeat or evade the
17 telecommunications gross receipts tax is guilty of a Class 6 felony;
- 18 (2) Fails to pay the telecommunications gross receipts tax due under this chapter within
19 sixty days from the date the tax becomes due is guilty of a Class 1 misdemeanor;
- 20 (3) Fails to keep the records required by this chapter or refuses to exhibit these records
21 to the department for the purpose of examination is guilty of a Class 1 misdemeanor;
- 22 (4) Fails to file a return required by this chapter within sixty days from the date the return
23 is due is guilty of a Class 1 misdemeanor;
- 24 (5) Engages in business as a telecommunications company under this chapter without

obtaining a telecommunications gross receipts tax license is guilty of a Class 1 misdemeanor;

(6) Engages in business as a telecommunications company under this chapter after the company's telecommunications gross receipts tax license has been revoked or canceled by the secretary is guilty of a Class 6 felony;

(7) Willfully violates any rule of the secretary for the administration and enforcement of the provisions of this chapter is guilty of a Class 1 misdemeanor;

(8) Violates either subdivision (2) or subdivision (4) of this section two or more times in any twelve-month period is guilty of a Class 6 felony; or

(9) Engages in business as a telecommunications company under this chapter without obtaining a telecommunications gross receipts tax license after having been notified in writing by the secretary that the telecommunications company is subject to the provisions of this chapter is guilty of a Class 6 felony. However, it is not a violation of this subdivision if the telecommunications company providing any telecommunications service files an application for a telecommunications gross receipts tax license and meets all lawful prerequisites for obtaining such license within three days from receipt of written notice from the secretary.

For purposes of this section, the term, ~~telecommunications company~~ person, includes corporate officers ~~having, member-managers or managers of limited liability companies, or partners that control, supervision of supervise, or are~~ charged with the responsibility ~~for making of filing~~ tax returns or remitting tax payments pursuant to this chapter.

Section 10. That § 10-33A-18 be amended to read as follows:

10-33A-18. If a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership subject to the gross receipts tax under this

1 chapter fails for any reason to file the required returns or to pay the tax due, any of ~~its~~ the
2 corporate officers having, member-managers or managers of limited liability companies, or
3 partners of partnerships that control, or supervision of supervise, or are charged with the
4 responsibility ~~for making such~~ of filing the returns ~~and or remitting tax~~ payments are personally
5 liable for ~~such~~ the failure. The dissolution of a corporation, limited liability company, limited
6 partnership, limited liability partnership, or limited liability limited partnership does not
7 discharge an ~~officer's~~ officer, member-manager, manager, or partner's liability for a prior failure
8 of the corporation, limited liability company, limited partnership, limited liability partnership,
9 or limited liability limited partnership to ~~make~~ file a return or remit the tax due. The sum due
10 for such a liability may be assessed and collected as provided by law.

11 If ~~any~~ the responsible corporate ~~officer elects~~ officers, limited liability company member-
12 managers, managers, or partners elect not to be personally liable for the failure to file the
13 required returns or to pay the tax due, the corporation, limited liability company, limited
14 partnership, limited liability partnership, or limited liability limited partnership shall provide the
15 department with a surety bond or certificate of deposit as security for payment of any tax that
16 may become due. The bond or certificate of deposit provided for in this section shall be in an
17 amount equal to the estimated annual gross receipts multiplied by the applicable sales or gross
18 receipts tax rate. This section does not apply to elected or appointed officials of a municipality
19 if ~~they are~~ bonded pursuant to §§ 9-14-6 and 9-14-6.1.